REMARKS/ARGUMENTS

Claims 1-62 are pending in the present application. The Examiner has rejected claims 1-62. Applicant respectfully requests reconsideration of pending claims 1-62. The Examiner has objected to the drawings and the specification of the application. Applicant respectfully request reconsideration of the drawings and the specification.

In the Examiner's Response to Amendment, the Examiner states, "The applicant...fails to provide any evidence that this limitation was supported by the applicant's original disclosure." The Examiner continues, "The Examiner can find no evidence that the amended limitation was supported by the applicant's original disclosure and therefore a rejection is set forth in the office action based on 35 USC section 112 1st paragraph."

In the Examiner's Response to Arguments, Applicant submits support for "wherein said control plane congestion is not data plane congestion" can be found, for example, in the specification at page 4, lines 1-3, page 11, lines 14-23, and page 14, lines 14-18. Applicant submits support for "wherein said control plane congestion occurs in a control plane" can be found, for example, in the specification at page 1, lines 23-28, and page 4, lines 4-20. Applicant submits support for "said control plane carrying a connection setup message" can be found, for example, in the specification at page 4, lines 1-3, and page 11, lines 14-17. Applicant submits support for "said data plane congestion occurs in a data plane" can be found, for example, in the specification at page 4, lines 1-3, page 11, lines 15-17, and page 14, lines 14-18. Applicant submits support for "said data plane carrying data packets for connections within the signaling network" can be found, for example, at page 4, lines 1-3, page 11, lines 15-17, and page 9, lines 14 and 15. As the Examiner states the rejection based on 35 U.S.C. § 112, 1st paragraph, results from the purported lack of support for the foregoing by Applicant's original disclosure, Applicant submits such rejection is obviated by Applicant's showing of examples of support for the foregoing in Applicant's original disclosure.

The Examiner has objected to the drawings under 37 CFR 1.83(a). The Examiner states, "the 'control plane,' 'routing plane,' 'signaling plane,' and 'data plane' must be shown or the feature(s) canceled from the claim(s)." Applicant respectfully disagrees. Applicant submits the pending claims are method claims, congestion notification processor claims, wherein the congestion notification processor comprises a processing module and memory, and connection processor claims, wherein the

connection processor comprises a processing module and memory. As an example, Applicant submits Figure 2 illustrates a congestion notification processor 158 comprising processing module 152 and memory 154. As an example, Applicant submits Figure 4 illustrates a connection processor 138 comprising a processing module 132 and memory 134. As an example, Applicant submits Figures 3 and 5 illustrate methods. Applicant notes no apparatus claims are presented reciting a "control plane," a "routing plane," a "signaling plane," or a "data plane" as elements of the apparatus. Therefore, Applicant submits no drawings illustrating such apparatus need be provided. Accordingly, Applicant submits the Examiner's objections to the drawings under 37 C.F.R. § 1.83(a) are obviated.

The Examiner has objected to the specification as failing to provide proper antecedent basis for the claimed subject matter. The Examiner states, "...the specification does not provide any definition of a 'control plane,' a 'signaling plane,', a 'routing plane,' or a 'data plane.'" Applicant respectfully disagrees. Applicant submits the pending claims are method claims, congestion notification processor claims, wherein the congestion notification processor comprises a processing module and memory, and connection processor claims, wherein the connection processor comprises a processing module and memory. As an example, Applicant submits Figure 2 illustrates a congestion notification processor 158 comprising processing module 152 and memory 154. As an example, Applicant submits Figure 4 illustrates a connection processor 138 comprising a processing module 132 and memory 134. As an example, Applicant submits Figures 3 and 5 illustrate methods. Applicant notes no apparatus claims are presented reciting a "control plane," a "routing plane," a "signaling plane," or a "data plane" as elements of the apparatus. Therefore, Applicant disagrees with what the Examiner apparently considers to be "the claimed subject matter" and submits the specification provides antecedent basis for what is actually claimed, as Applicant has provided citation of specific examples above in reply to the Examiner's Response to Amendment. Thus, Applicant submits the objection to the specification has been obviated.

The Examiner has rejected claims 1-62 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Applicant respectfully disagrees. In the Examiner's Response to Amendment, the Examiner states, "The Examiner can find no evidence that the amended limitation was supported by the applicant's original disclosure and therefore a rejection is set forth in the office action based on 35 USC section 112 1st paragraph." As that purported lack of support was the basis for the rejection under 35 U.S.C. 112, first paragraph, and Applicant cited specific examples of support for such subject matter in Applicant's reply to the Examiner's Response to Amendment

above, Applicant submits the Examiner's rejection has been obviated. While the Examiner states, "The only relationship described in the applicant's originally filed disclosure page 11, lines 14-17,...," Applicant notes Applicant cited numerous specific examples of disclosure found in the originally filed specification in support of the claimed subject matter, as amended. Therefore, Applicant submits claims 1-62 are in condition for allowance.

The Examiner has rejected claims 1-6, 8-25 and 27-62 under 35 U.S.C. § 102(e) as allegedly being anticipated by Fedyk et al. (U.S. Patent Number 6,560,654). Applicant respectfully disagrees.

Regarding claim 20, Applicant reiterates Applicant's previously submitted arguments. For example, Applicant submits Fedyk teaches, in col. 5, lines 37-41, in the case of "a positive feedback message," that the "positive feedback message" indicates "...that such node is ready to receive data transmissions from the source node 12...." Accordingly, Applicant submits Fedyk's "feedback messages," whether "positive" or "negative," appear to relate to a readiness to receive data transmissions, not to "control plane congestion."

As another example, Applicant submits the cited portions of the cited reference fail to disclose "wherein said control plane congestion is not data plane congestion, wherein said control plane congestion occurs in the control plane, said control plane carrying a connection setup message, and said data plane congestion occurs in a data plane, said data plane carrying data packets." While the Examiner cites "(col. 5, lines 13, 30, the feedback messages taught by Fedyk are independent of the normal data traffic and therefore the satisfy this limitation)," Applicant sees no teaching in the cited portion of the cited reference that "the feedback messages...are independent of the normal data traffic." Moreover, Applicant submits the referenced portion of claim 20 does not recite "...are independent of the normal data traffic...." Thus, Applicant submits the teaching alleged by the Examiner fails to disclose each and every aspect of the claimed subject matter. Therefore, Applicant submits the Examiner has failed to make a *prima facie* showing of anticipation. Thus, Applicant submits claim 20 is in condition for allowance.

Regarding claim 21, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 21. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the memory stores operating instructions that, when executed, cause the processing module to provide the congestion notification via a routing plane within the signaling network." The Examiner states, "(col. 5, lines 13-30 and Figure 1, the devices in Figure 1 are

considered a routing plane and the network is a signaling network)." However, Applicant submits such characterization by the Examiner appears to be inconsistent with the Examiner's characterization of the alleged teachings of Fedyk with regard to claim 23, where the Examiner states, "(col. 4, lines 9-37, the network in Figure 1 is considered a signaling plane)." Thus, Applicant submits claim 21 is in condition for allowance.

Regarding claim 22, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 22. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the memory stores operating instructions that, when executed, cause the processing module to provide the congestion notification via the routing plane such that the congestion notification is provided to neighboring network elements proximal to the network element." Applicant notes Fedyk states, in col. 5, lines 52-55,"In preferred embodiments, however, only the source node database is updated and thus, is out of synchronization with the topology databases in the other nodes in the network 10." Thus, Applicant submits claim 22 is in condition for allowance.

Regarding claim 23, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 23. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the memory stores operating instructions that, when executed, cause the processing module to provide the congestion notification via a signaling plane within the signaling network." The Examiner states, "(col. 4, lines 9-37, the network in Figure 1 is considered a signaling plane)." However, Applicant submits such characterization by the Examiner appears to be inconsistent with the Examiner's characterization of the alleged teachings of Fedyk with regard to claim 21, where the Examiner states, "(col. 5, lines 13-30 and Figure 1, the devices in Figure 1 are considered a routing plane and the network is a signaling network)." Thus, Applicant submits claim 23 is in condition for allowance.

Regarding claim 24, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 24. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the memory stores operating instructions that, when executed, cause the processing module to provide the congestion notification in response to a received connection setup message generated by a source node in the network, wherein the at least one additional node includes the source node." Applicant has submitted arguments for the allowance of claim 20, from which claim 24 depends. Thus, Applicant submits claim 24 is also in condition for allowance.

Regarding claim 25, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 25. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the memory stores operating instructions that, when executed, cause the processing module to provide the congestion notification via a signaling plane within the signaling network, wherein the congestion notification is provided to each network element along a path traversed by the connection setup message." Applicant notes Fedyk states, in col. 5, lines 18-28, "As discussed in greater detail with reference to FIG. 4, an intervening node 16 that determines that its link 18 does not satisfy the parameters in the setup message responsively generates a point-to-point feedback message to the source node 12. The feedback message includes data identifying a node, its link 18, and data indicating the unsatisfactory condition not met by such intervening node's link 18. It should be noted that the term "point-to-point" is used herein in the conventional manner to indicate that a message is transmitted from one node to another node and thus, is not a broadcast message." Thus, Applicant submits claim 25 is in condition for allowance.

Regarding claim 27, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 27. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the signaling network is included in at least one of a packet-based communication network and a cell-based communication network." Applicant has presented arguments for the allowability of claim 20, from which claim 27 depends. Thus, Applicant submits claim 27 is also in condition for allowance.

Regarding claim 28, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 28. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the signaling network is a source routed control network." Applicant has presented arguments for the allowability of claim 20, from which claim 28 depends. Thus, Applicant submits claim 28 is also in condition for allowance.

Regarding claim 29, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 29. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the signaling network is included in an ATM network utilizing a Private Node Network Interface (PNNI) routing and signaling protocol." Applicant has presented arguments for the allowability of claim 20, from which claim 29 depends. Thus, Applicant submits claim 29 is also in condition for allowance.

Regarding claims 1-6 and 8-10, to whatever extent the Examiner alleges that claims 1-6 and 8-10 "feature the same limitations as claims 20-25 and 27-29 and are rejected for the same reasons as claims 20-25 and 27-29," Applicant reiterates Applicant's arguments for the allowability of claims 20-25 and 27-29. Therefore, Applicant submits the Examiner has failed to make a *prima facie* showing of anticipation. Thus, Applicant submits claims 1-6 and 8-10 are in condition for allowance.

Regarding claim 30, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 30. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein utilization of the congestion notification by the at least one additional network element further comprises at least one of: updating routing tables, generating a congestion database, propagating the congestion notification to additional elements in the network, and compiling statistics reflecting network performance." Applicant notes Fedyk states, in col. 5, line 51, "...update the database in the data storage 26..." and, in col. 5, lines 52-55,"In preferred embodiments, however, only the source node database is updated and thus, is out of synchronization with the topology databases in the other nodes in the network 10." Applicant does not see teaching in the cited portions of the cited reference of "the database in data storage 26" or the "source node database" being a "congestion database." Thus, Applicant submits claim 30 is in condition for allowance.

Regarding claim 31, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 31. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the congestion notification includes a congestion level and wherein utilization of the congestion notification further comprises reducing control traffic to the network element at which the control plane congestion has been detected, wherein an amount of reduction in control traffic to the network element is based on the congestion level." Applicant notes Fedyk states, in col. 5, lines 34-36, "...indicating that a link 18 in the selected path does not meet the parameters in the setup message...." Accordingly, it appears that Fedyk does not teach "...wherein the congestion notification includes a congestion level...." Thus, Applicant submits claim 31 is in condition for allowance.

Regarding claim 32, Applicant reiterates Applicant's previously submitted arguments. For example, Applicant submits the cited portions of the cited reference fail to disclose "...wherein the network parameters include communication network topology information and congestion information." While the Examiner cites "(col. 5, lines 10-12 and lines 45-61)," Applicant notes col. 5,

lines 10-12, merely states, "In preferred embodiments, the setup message is a control plane message." Applicant notes col. 5, lines 45-61, states as follows:

> Once the feedback message is received, it is parsed by the link state module 27 to determine the required topology data for the network 10. Such data may include link and node data, available bandwidth through the link(s) 18, and whether the selected path is to be used to transmit data. Accordingly, such data is utilized by the link state module 27 to update the database in the data storage 26 in accord with conventional processes (step 308). In preferred embodiments, however, only the source node database is updated and thus, is out of synchronization with the topology databases in the other nodes in the network 10. Although not "in sync" with the other topology databases, the source node database is more up-to-date than the topology databases in the other nodes in the network. The source node 12 may utilize this updated data for selecting another path to the destination node 14 (noted below), or for utilizing the network 10 for any other purpose.

Applicant submits the cited portion does not disclose the subject matter of claim 32.

Moreover, while the Examiner states, with citing any support for the contention, that "(control plane information will always pertain to control plane congestion)." Applicant respectfully disagrees and requests the Examiner cite teaching in support of such contention.

Also, Applicant submits the cited portions of the cited reference fail to disclose "wherein said control plane congestion information pertains to control plane congestion, wherein said control plane congestion is not data plane congestion, wherein said control plane congestion occurs in a control plane, said control plane carrying a first connection setup message, and said data plane congestion occurs in a data plane, said data plane carrying data packets for connections within the communication network." While the Examiner cites, "(col. 5, lines 13, 30, the feedback messages taught by Fedyk are independent of the normal data traffic and therefore the satisfy this limitation)," Applicant sees no teaching in the cited portion of the cited reference that "the feedback messages...are independent of the normal data traffic." Moreover, Applicant submits the referenced portion of claim 32 does not recite "...are independent of the normal data traffic...." Thus, Applicant submits the teaching alleged by the Examiner fails to disclose each and every aspect of the claimed subject matter. Therefore, Applicant submits the Examiner has failed to make a *prima facie* showing of anticipation. Thus, Applicant submits claim 32 is in condition for allowance.

Regarding claim 33, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 33. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "receiving an indication of control plane congestion at a congestion point along the first routing path." As another example, Applicant submits the cited portions of the cited reference fail to anticipate "determining a second routing path for the connection using the network

parameters and the indication of control plane congestion." While the Examiner cites "(col. 5, lines 13-60, the feedback message)" as allegedly teaching "an indication of control plane congestion at a congestion point along the first routing path," Applicant respectfully disagrees. While Fedyk states in col. 5, lines 11 and 12, "In preferred embodiments, the setup message is a control plane message," Applicant does not see Fedyk teaching the "feedback message" as being "...an indication of control plane congestion at a congestion point along the first routing path...." Rather, Fedyk teaches, in col. 5, lines 37-41, in the case of "a positive feedback message," that the "positive feedback message" indicates "...that such node is ready to receive data transmissions from the source node 12...." Accordingly, Applicant submits Fedyk's "feedback messages," whether "positive" or "negative," appear to relate to a readiness to receive data transmissions, not to "control plane congestion." Thus, Applicant submits claim 33 is in condition for allowance.

Regarding claim 34, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 34. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "wherein the processing module stores the network parameters in a table, and wherein memory stores operating instructions that, when executed, cause the processing module to add congestion information included in the indication of control plane congestion to the network parameters stored in the table." Applicant notes Fedyk states, in col. 5, lines 45-49, "Once the feedback message is received, it is parsed by the link state module 27 to determine the required topology data for the network 10. Such data may include link and node data, available bandwidth through the link(s) 18, and whether the selected path is to be used to transmit data." However, Applicant does not see teaching in the cited portion of the cited reference of "...add congestion information included in the indication of control plane congestion to the network parameters stored in the table." Thus, Applicant submits claim 34 is in condition for allowance.

Regarding claim 35, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 35. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the memory stores operating instructions that, when executed, cause the processing module to remove the congestion information from the table after a predetermined time period." While Fedyk states, in col. 6, lines 20-22, "The source node 12, in this case, may transmit the data upon expiration of a time interval, or upon receipt of some other message," Applicant does not see teaching in the cited portion of the cited reference of "...remove the congestion

information from the table after a predetermined time period." Thus, Applicant submits claim 35 is in condition for allowance.

Regarding claim 36, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 36. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the congestion information includes a level of congestion, and wherein the predetermined time period is based on the level of congestion." While Fedyk states, in col. 6, lines 20-22, "The source node 12, in this case, may transmit the data upon expiration of a time interval, or upon receipt of some other message," Applicant does not see teaching in the cited portion of the cited reference of "...wherein the congestion information includes a level of congestion, and wherein the predetermined time period is based on the level of congestion." Thus, Applicant submits claim 36 is in condition for allowance.

Regarding claim 37, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 37. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the memory stores operating instructions that, when executed, cause the processing module to perform an additional function of relaying the indication of control plane congestion to at least one additional node in the communication network." Applicant does not see teaching as to the above-referenced feature in col. 6, lines 4-22, as cited by the Examiner. Thus, Applicant submits claim 37 is in condition for allowance.

Regarding claim 38, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 38. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the memory stores operating instructions that, when executed, cause the processing module to store congestion information included in the indication of control plane congestion in a congestion database." While the Examiner cites col. 6, lines 4-22, of the cited reference, Applicant can find no teaching of "...to store congestion information included in the indication of control plane congestion in a congestion database" within the cited portion of the cited reference. Thus, Applicant submits claim 38 is in condition for allowance.

Regarding claim 39, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 39. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the indication of control plane congestion is received by the processing module via a routing plane." Applicant has discussed the apparent inconsistency in the

Examiner's characterization of the teachings of the cited reference with respect to claims 21 and 23 above. Applicant submits such inconsistency appears not to have been rectified with respect to the rejection of claims 39 and 40. Thus, Applicant submits claim 39 is in condition for allowance.

Regarding claim 40, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 40. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "wherein the indication of control plane congestion is received by the processing module via a signaling plane." Applicant has discussed the apparent inconsistency in the Examiner's characterization of the teachings of the cited reference with respect to claims 21 and 23 above. Applicant submits such inconsistency appears not to have been rectified with respect to the rejection of claims 39 and 40. Thus, Applicant submits claim 40 is in condition for allowance.

Regarding claims 11-19, to whatever extent the Examiner alleges that claims 11-19 "feature the same limitations as claims 32-40 and are rejected for the same reasons as claims 32-40," Applicant reiterates Applicant's arguments for the allowability of claims 32-40. Therefore, Applicant submits the Examiner has failed to make a *prima facie* showing of anticipation. Thus, Applicant submits claims 11-19 are in condition for allowance.

Regarding claim 41, Applicant reiterates Applicant's previously submitted arguments. Applicant submits Fedyk teaches, in col. 5, lines 37-41, in the case of "a positive feedback message," that the "positive feedback message" indicates "...that such node is ready to receive data transmissions from the source node 12...." Accordingly, Applicant submits Fedyk's "feedback messages," whether "positive" or "negative," appear to relate to a readiness to receive data transmissions, not to "control plane congestion."

As another example, Applicant submits the cited portions of the cited reference fail to disclose "wherein said control plane congestion is not data plane congestion, wherein said control plane congestion occurs in the control plane, said control plane carrying a connection setup message, and said data plane congestion occurs in a data plane, said data plane carrying data packets for connections within the signaling network." While the Examiner cites "(col. 5, lines 13, 30, the feedback messages taught by Fedyk are independent of the normal data traffic and therefore the satisfy this limitation)," Applicant sees no teaching in the cited portion of the cited reference that "the feedback messages...are independent of the normal data traffic." Moreover, Applicant submits the referenced portion of claim 41 does not recite "...are independent of the normal data traffic...." Thus, Applicant submits the

teaching alleged by the Examiner fails to disclose each and every aspect of the claimed subject matter. Therefore, Applicant submits the Examiner has failed to make a *prima facie* showing of anticipation. Thus, Applicant submits claim 41 is in condition for allowance.

Regarding claim 42, Applicant submits Fedyk teaches, in col. 5, lines 37-41, in the case of "a positive feedback message," that the "positive feedback message" indicates "...that such node is ready to receive data transmissions from the source node 12...." Accordingly, Applicant submits Fedyk's "feedback messages," whether "positive" or "negative," appear to relate to a readiness to receive data transmissions, not to "control plane congestion."

As another example, Applicant submits the cited portions of the cited reference fail to disclose "wherein said control plane congestion is not data plane congestion, wherein said control plane congestion occurs in the control plane, said control plane carrying a connection setup message, and said data plane congestion occurs in a data plane, said data plane carrying data packets for connections within the signaling network." While the Examiner cites "(col. 5, lines 13, 30, the feedback messages taught by Fedyk are independent of the normal data traffic and therefore the satisfy this limitation)," Applicant sees no teaching in the cited portion of the cited reference that "the feedback messages...are independent of the normal data traffic." Moreover, Applicant submits the referenced portion of claim 42 does not recite "...are independent of the normal data traffic...." Thus, Applicant submits the teaching alleged by the Examiner fails to disclose each and every aspect of the claimed subject matter. Therefore, Applicant submits the Examiner has failed to make a *prima facie* showing of anticipation. Thus, Applicant submits claim 42 is in condition for allowance.

Regarding claim 52, Applicant submits Fedyk teaches, in col. 5, lines 37-41, in the case of "a positive feedback message," that the "positive feedback message" indicates "...that such node is ready to receive data transmissions from the source node 12...." Accordingly, Applicant submits Fedyk's "feedback messages," whether "positive" or "negative," appear to relate to a readiness to receive data transmissions, not to "control plane congestion."

As another example, Applicant submits the cited portions of the cited reference fail to disclose "wherein said control plane congestion is not data plane congestion, wherein said control plane congestion occurs in the control plane, said control plane carrying a connection setup message, and said data plane congestion occurs in a data plane, said data plane carrying data packets for connections within the signaling network." While the Examiner cites "(col. 5, lines 13, 30, the feedback messages

taught by Fedyk are independent of the normal data traffic and therefore the satisfy this limitation)," Applicant sees no teaching in the cited portion of the cited reference that "the feedback messages...are independent of the normal data traffic." Moreover, Applicant submits the referenced portion of claim 41 does not recite "...are independent of the normal data traffic...." Thus, Applicant submits the teaching alleged by the Examiner fails to disclose each and every aspect of the claimed subject matter. Therefore, Applicant submits the Examiner has failed to make a *prima facie* showing of anticipation. Thus, Applicant submits claim 52 is in condition for allowance.

Regarding claim 53, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 53. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the at least one additional network element is a source node, wherein the providing the congestion notification occurs in response to a received connection setup message generated by the source node." Applicant has presented arguments for the allowability of claim 52, from which claim 53 depends. Thus, Applicant submits claim 53 is also in condition for allowance.

Regarding claim 54, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 54. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the congestion notification is provided to a source node and to the at least one additional network element in the signaling network in response to a received connection setup message generated by the source node, wherein the at least one additional network element utilizes the congestion notification for reducing control traffic to the network element at which the control plane congestion has been detected." While the Examiner states, "By forwarding the feedback message, each node is utilizing the congestion to reduce control traffic." Applicant respectfully disagrees. Applicant notes Fedyk states, in col. 5, lines 18-28, "As discussed in greater detail with reference to FIG. 4, an intervening node 16 that determines that its link 18 does not satisfy the parameters in the setup message responsively generates a point-to-point feedback message to the source node 12. The feedback message includes data identifying a node, its link 18, and data indicating the unsatisfactory condition not met by such intervening node's link 18. It should be noted that the term "point-to-point" is used herein in the conventional manner to indicate that a message is transmitted from one node to another node and thus, is not a broadcast message." Thus, Applicant submits claim 54 is in condition for allowance.

Regarding claim 55, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 55. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the at least one additional network element comprises a network element along a path traversed by the connection setup message." Applicant respectfully disagrees. Applicant notes Fedyk states, in col. 5, lines 18-28, "As discussed in greater detail with reference to FIG. 4, an intervening node 16 that determines that its link 18 does not satisfy the parameters in the setup message responsively generates a point-to-point feedback message to the source node 12. The feedback message includes data identifying a node, its link 18, and data indicating the unsatisfactory condition not met by such intervening node's link 18. It should be noted that the term "point-to-point" is used herein in the conventional manner to indicate that a message is transmitted from one node to another node and thus, is not a broadcast message." Thus, Applicant submits claim 55 is in condition for allowance.

Regarding claim 56, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 56. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the congestion notification comprises a congestion level, wherein the scaling back of traffic is based on the congestion level." The Examiner states that claim 56 "...is rejected for the same reasons as pointed out in the rejection of claim 41." Applicant has presented arguments for the allowability of claim 41. To whatever extent the Examiner alleges that claims 56 "is rejected for the same reasons pinted out in the rejection of claim 41," Applicant reiterates Applicant's arguments for the allowability of claim 41. Thus, Applicant submits claim 56 is in condition for allowance.

Regarding claim 57, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 57. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "maintaining the congestion information for a predetermined time period." As another example, Applicant submits the cited portions of the cited reference fail to anticipate "removing the congestion information after the predetermined time period." While Fedyk states, in col. 6, lines 20-22, "The source node 12, in this case, may transmit the data upon expiration of a time interval, or upon receipt of some other message," Applicant does not see teaching in the cited portion of the cited reference of "...maintaining the congestion information for a predetermined time period." Thus, Applicant submits claim 57 is in condition for allowance.

Regarding claim 58, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 58. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the operating instructions further cause the processing module to perform the maintaining of the congestion information in a routing table." Applicant notes Fedyk states, in col. 5, lines 45-49, "Once the feedback message is received, it is parsed by the link state module 27 to determine the required topology data for the network 10. Such data may include link and node data, available bandwidth through the link(s) 18, and whether the selected path is to be used to transmit data." However, Applicant does not see teaching in the cited portion of the cited reference of "...wherein the operating instructions further cause the processing module to perform the maintaining of the congestion information in a routing table." Thus, Applicant submits claim 58 is in condition for allowance.

Regarding claim 59, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 59. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the operating instructions further cause the processing module to perform the maintaining of the congestion information in a topology database." Applicant notes Fedyk states, in col. 5, lines 45-49, "Once the feedback message is received, it is parsed by the link state module 27 to determine the required topology data for the network 10. Such data may include link and node data, available bandwidth through the link(s) 18, and whether the selected path is to be used to transmit data." However, Applicant does not see teaching in the cited portion of the cited reference of "...wherein the operating instructions further cause the processing module to perform the maintaining of the congestion information in a topology database." Thus, Applicant submits claim 59 is in condition for allowance.

Regarding claim 60, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 60. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...prioritizing traffic such that traffic of a priority is attempted to be routed through the network element at which the control plane congestion has been detected after the congestion notification has been provided." While the Examiner cites "col. 4, line 61-col. 5, line 12 and col. 6, lines 18-29...," Applicant submits that while Fedyk mentions "priority" in col. 4, line 61-col. 5, line 12 and states, in col. 6, lines 20-22, "The source node 12, in this case, may transmit the data upon expiration of a time interval, or upon receipt of some other message," Applicant submits such separate teachings do not appear to teach "...prioritizing traffic such that traffic of a priority is

attempted to be routed through the network element at which the control plane congestion has been detected after the congestion notification has been provided." Rather, col. 5, lines 6 and 7 of Fedyk state, "...to ensure that such data is reliably transmitted to the destination node 14." Applicant sees no teaching in Fedyk as to how transmitting the data upon expiration of a time interval "ensures that such data is reliably transmitted to the destination node 14." Thus, Applicant submits claim 60 is in condition for allowance.

Regarding claim 61, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 61. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "...wherein the traffic of a priority further comprises traffic of a high priority." Applicant has submitted arguments for the allowability of claim 60, from which claim 61 depends. Thus, Applicant submits claim 61 is in condition for allowance.

Regarding claim 62, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 62. As one example, Applicant submits the cited portions of the cited reference fail to anticipate "wherein the traffic of a priority further comprises traffic of a lower priority." Applicant has submitted arguments for the allowability of claim 60, from which claim 62 depends. Thus, Applicant submits claim 62 is in condition for allowance.

Regarding claims 43-51, to whatever extent the Examiner alleges that claims 43-51 "feature a method corresponding to that done by the congestion notification processor of claims 52-62 and are rejected for the same reasoning," Applicant reiterates Applicant's arguments for the allowability of claims 52-62. Therefore, Applicant submits the Examiner has failed to make a *prima facie* showing of anticipation. Thus, Applicant submits claims 43-51 are in condition for allowance.

The Examiner has rejected claims 7 and 26 as allegedly being unpatentable over Fedyk et al. (U.S. Patent No. 6,560,654) in view of Nishihara (U.S. Patent No. 6, 424,620. Applicant respectfully disagrees.

Regarding Claims 7 and 26, the Examiner acknowledges "...Fedyk does not explicitly teach distinguishing between node congestion and link congestion." However, the Examiner cites "(col. 17, lines 41-39, the BRM packet indicates whether congestion is caused by inside or outside blocking)." Applicant presumes the Examiner is referring to col. 17, lines 41-49, of the Nishihara reference, as line 49 is greater than line 41 and lines 41-49 define a paragraph. Applicant respectfully disagrees. The Examiner states "It would have been obvious to one of ordinary skill in the Computer Networking art

at the time of the applicant's invention to combine the teachings of Fedyk regarding the detection of control plane congestion with the teachings of Nishihara regarding detecting congestion type because differing congestion types can be handled more efficiently by taking corresponding actions (Nishihara, col. 17, lines 50-67). Applicant submits the Nishihara reference teaches away from such combination and such alleged motivation to combine. Applicant notes that while the abstract of Nishihara states "...a congestion detecting unit for detecting congestion caused by inside blocking from the detection result of the inside node congestion and the congestion caused by the outside blocking...," the abstract of Nishihara then concludes "...a transfer channel retrieval unit for retrieving a transfer channel possible to avoid a relay node having the inside node congestion detected when detecting the congestion caused by the inside blocking." Thus, Applicant submits Nishihara appears to teach "...to avoid a relay node having the inside node congestion detected...," not "...differing congestion types can be handled more efficiently by taking corresponding actions."

Moreover, Applicant submits the Examiner does not appear to have identified any teaching as to "inside blocking" and "outside blocking" of Nishihara relating to "node congestion" and "link congestion." Thus, Applicant submits claims 7 and 26 are in condition for allowance.

In conclusion, Applicant has overcome all of the Office's rejections, and early notice of allowance to this effect is earnestly solicited. If, for any reason, the Office is unable to allow the Application on the next Office Action, and believes a telephone interview would be helpful, the Examiner is respectfully requested to contact the undersigned attorney.

Respectfully submitted,

12/26/2008

Date

Ross D. Snyder, Reg. No. 37,730
Attorney for Applicant(s)
Ross D. Snyder & Associates, Inc.
PO Box 164075
Austin, Texas 78716-4075
(512) 347-9223 (phone)
(512) 347-9224 (fax)